

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**JORGE CASTANEDA,
Plaintiff,**

v.

**TRAVELERS LLOYDS OF TEXAS
INSURANCE COMPANY
Defendant.**

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CIVIL ACTION NO. 1:15-cv-259

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b) (DIVERSITY)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW Defendant Travelers Lloyds of Texas Insurance Company (“Defendant”) hereby petition this Court pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446 for removal, on the basis of diversity of citizenship jurisdiction, to the United States District Court for the Western District of Texas, Austin Division, of the action numbered and styled Cause No. 15-0098-C; *Jorge Castaneda v. Travelers Lloyds of Texas Insurance Company*, in the County Court at Law Number 2, Hays County, Texas (the “State Court case”), and in support thereof would respectfully show this Court as follows:

I. FACTS

1. Plaintiff filed his Original Petition (“Petition”) in the State Court case on February 23, 2015. A true and correct copy of the Original Petition is attached hereto as part of Exhibit A. In the Original Petition, Plaintiff asserted claims for breach of contract, prompt payment act claims, violations of the DTPA and Texas Insurance Code, unfair insurance practices, fraud, conspiracy, and breach of duty of good faith and fair dealing.

2. Plaintiff served Defendant with citation and a copy of his Petition in the State Court case on March 6, 2015. This Notice of Removal is filed within thirty (30) days of service of the

Petition, in compliance with 28 U.S.C. § 1446(b).

3. Plaintiff is a citizen and resident of the State of Texas.

4. Defendant Travelers Lloyds of Texas Insurance Company is an unincorporated Lloyds plan insurance association that sells insurance under a Lloyds Plan pursuant to Texas Insurance Code Chapter 941, whose underwriters are all citizens of the State of Connecticut. None of the underwriters are citizens of the State of Texas. The citizenship of an unincorporated association is determined solely by the citizenship of its members. See *Ponton v. Allstate Texas Lloyd's*, No. H-10-4842, 2011 WL 2837592 (S.D. Tex. July 18, 2011).

II. AMOUNT IN CONTROVERSY

5. Plaintiff's Petition is filed under Texas Rule of Civil Procedure 169:

"The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees."

Thus, the petition includes an allegation supporting the award of \$100,000 in damages.

III. COMPLETE DIVERSITY EXISTS

6. This action is a civil action which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1332(a) in that it is between citizens of different states and it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

IV. PROCEDURAL REQUIREMENTS

7. By virtue of filing this Notice of Removal, Defendant does not waive its right to assert any motions to dismiss, including Rule 12 motions permitted by the Federal Rules of Civil Procedure. Defendant further reserves the right to seek an abatement of this cause of action until

Plaintiff complies with the pre-suit notice requirements of Texas Business & Commerce Code Chapter 17.505 and Texas Insurance Code Chapter 541.

8. All of the papers on file in the State Court case at the time of removal are attached hereto as Exhibit A. Those papers include the citation, Plaintiff's Original Petition, the county court docket sheet, and all answers on file.

9. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

10. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the County Clerk of Hays County, Texas promptly after the filing of this Notice.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Travelers Lloyds of Texas Insurance Company request that this action be removed from the County Court at Law Number 2, Hays County, Texas to the United States District Court for the Western District of Texas, Austin Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

SKELTON & WOODY
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By: /s/ Edward F. Kaye
J. Hampton Skelton
State Bar No. 18457700
Edward F. Kaye
State Bar No. 24012942
ATTORNEYS FOR DEFENDANT
TRAVELERS LLOYDS OF TEXAS INSURANCE
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2015, I am electronically filing the foregoing with the Clerk of the Court using the Case Management/Electronic Case Files (“CM/ECF”) system, and I hereby certify that I have mailed by certified mail, return receipt requested the document to the following non-CM/ECF participant:

Eric B. Dick, LL.M.
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/s/ Edward F. Kaye
Edward F. Kaye